WEST VIRGINIA LEGISLATURE
SECOND REGULAR SESSION, 1992

ENROLLED
Com. Sub. For
HOUSE BILL No. 4055

(By Delegate
Ms. Speaker, Mr. Chambers,
and Delegate Bunk)
[By Request of the Executive]

Passed
March 7, 1992

In Effect Ninety Days from Passage
AN ACT to repeal sections seventy-six, seventy-seven, seventy-eight, seventy-nine, eighty, eighty-one, eighty-two, eighty-three, eighty-four, eighty-six, eighty-seven, eighty-eight, eighty-nine, ninety and ninety-one, article twelve, chapter eleven of the code of West Virginia, one thousand nine hundred thirty-one, as amended; to repeal section fifty-six-a, article one, chapter thirty-one of said code; to amend and reenact section eighty-five, article twelve of said chapter eleven; to further amend said chapter eleven by adding thereto a new article, designated article twelve-c; and to amend and reenact article one, chapter thirty-one of said code by adding thereto a new section, designated section seventy-six-a, all relating to the corporate license tax; eliminating previous provision regarding assessment, card collections of the tax; eliminating the annual report required of corporations qualified to hold property or do business in the state; eliminating the preliminary annual report required for foreign corporations; providing definitions; providing imposition and rate of tax; providing exemptions from tax; providing for the payment and collection of tax; providing for assessment and collection of annual attorney-in-fact fee; providing for notice to taxpayers;
providing for reports by the secretary of state; providing for the application of the West Virginia Tax Procedure and Administration Act and the West Virginia Tax Crimes and Penalties Act; providing effective date and preservation of prior law; providing a severability clause; requiring judicial notification of court actions affecting corporation's status; imposing a fine for failure to file annual corporate license tax return; making it a misdemeanor to conduct business without corporate license.

Be it enacted by the Legislature of West Virginia:

That sections seventy-six, seventy-seven, seventy-eight, seventy-nine, eighty, eighty-one, eighty-two, eighty-three, eighty-four, eighty-six, eighty-seven, eighty-eight, eighty-nine, ninety and ninety-one, article twelve, chapter eleven of the code of West Virginia, one thousand nine hundred thirty-one, as amended, be repealed; that section fifty-six-a, article one, chapter thirty-one of said code be repealed; that section eighty-five, article twelve of said chapter eleven be amended and reenacted; that said chapter eleven be further amended by adding thereto a new article, designated article twelve-c; and that article one, chapter thirty-one, be amended by adding thereto a new section, designated section seventy-six-a, all to read as follows:

CHAPTER 11. TAXATION.

ARTICLE 12. BUSINESS REGISTRATION TAX.

§11-12-85. Investigation of corporations' delinquencies.

1 The tax commissioner, with the approval of the governor, may appoint agents to investigate all violations of the provisions of this article concerning landholding taxes on corporations, and also for the purpose of collecting such taxes from all corporations which have not paid the same, whether due from domestic or foreign corporations. The compensation of all such agents shall be fixed by the tax commissioner.

ARTICLE 12C. CORPORATE LICENSE TAX.

§11-12C-1. Definitions.

1 As used in this article:
(1) “Business activity” means all activities engaged in or caused to be engaged in with the object of gain or economic benefit, direct or indirect, but does not mean any of the activities of foreign corporations enumerated in subsections (b), (c) and (d), section forty-nine, article one, chapter thirty-one of this code.

(2) “Corporate license tax” or “license tax” or “tax” means, in addition to the amount of corporate license tax levied pursuant to this article, all interest, additions to tax, fines and penalties, unless the intention to give the term a more limited meaning is clear from the context in which it is used.

(3) “Delegate” in the phrase “or his delegate,” when used in reference to the tax commissioner, means any officer or employee of the state tax department duly authorized by the tax commissioner directly, or indirectly by one or more redelegations of authority, to perform the functions mentioned or described in this article or rules promulgated thereunder.

(4) “Domestic corporation” means a corporation incorporated under the laws of this state and corporations organized under the laws of the state of Virginia before the twentieth day of June, one thousand eight hundred and sixty-three, which have its principal place of business and chief works (if it has chief works) in this state. Every other corporation is a foreign corporation.

(5) “Foreign corporation” means a corporation which is not a domestic corporation.

(6) “Nonprofit corporation” means a nonprofit corporation as defined by section six, article one, chapter thirty-one of this code.

(7) “Tax commissioner” means the tax commissioner of the state of West Virginia or his or her delegate.

§11-12C-2. Corporate license required; tax levied; exemption from tax; effective date.

(a) Corporate license required. — No corporation, domestic or foreign, may engage in any business activity in this state without paying the corporate license tax to
(b) *Tax levied.* — Every corporation shall pay an annual corporate license tax for the license year which begins on the first day of July of each year and ends the thirtieth day of the following June. This tax shall be in addition to the annual fee, if any, payable to the secretary of state as attorney-in-fact. The amount of this tax shall be as follows:

1. **Amount of license tax on domestic corporations.** — Every domestic corporation shall pay an annual license tax on its charter for the fiscal year beginning on the first day of July of each year, based on its authorized capital stock as follows: If the authorized capital stock be five thousand dollars, or less, twenty dollars; if more than five thousand dollars and not more than ten thousand dollars, thirty dollars; if more than ten thousand dollars and not more than twenty-five thousand dollars, forty dollars; if more than twenty-five thousand dollars and not more than fifty thousand dollars, fifty dollars; if more than fifty thousand dollars and not more than seventy-five thousand dollars, eighty dollars; if more than seventy-five thousand dollars and not more than one hundred thousand dollars, one hundred dollars; if more than one hundred thousand dollars and not more than one hundred and twenty-five thousand dollars, one hundred and twenty dollars; if more than one hundred and twenty-five thousand dollars and not more than one hundred and fifty thousand dollars, one hundred and forty dollars; if more than one hundred and fifty thousand dollars and not more than one hundred and seventy-five thousand dollars, one hundred and sixty dollars; if more than one hundred and seventy-five thousand dollars and not more than two hundred thousand dollars, one hundred and seventy-five dollars; if more than two hundred thousand dollars and not more than five hundred thousand dollars, one hundred and eighty dollars; and an additional twenty cents on each one thousand dollars, or fraction thereof, in excess of two hundred thousand dollars; if more than one million dollars, one hundred and eighty dollars, and an additional twenty cents on each one thousand dollars, or fraction thereof, in excess of two hundred thousand dollars; if more than one million dollars and not more than fifteen million dollars, three hundred and
forty dollars, and an additional fifteen cents on each one
thousand dollars, or fraction thereof, in excess of one
million dollars; if more than fifteen million dollars,
twenty-five hundred dollars. The license tax collected
hereunder shall be in addition to the annual fee, if any,
payable to the secretary of state as statutory attorney-
in-fact. For the purpose of the assessment of the license
tax provided by this section, and for no other purpose,
shares of stock having no par value shall be presumed
to be of the par value of twenty-five dollars each:
Provided, That if such stock was originally issued for a
consideration greater than twenty-five dollars per share,
such license taxes as are required to be paid to the tax
commissioner shall be computed upon the basis of the
consideration for which such stock was issued.

(2) Amount of license tax on foreign corporations. —
It shall be the duty of the tax commissioner to assess
and fix the license tax of each foreign corporation
engaging in business activity in this state according to
the proportion of its issued and outstanding capital stock
which is represented by its property owned and used in
this state, which license tax shall be at the rate
prescribed in subdivision (1) of this subsection (b), plus
seventy-five percent of such tax. In no event shall any
such foreign corporation pay an annual license tax of
less than two hundred fifty dollars, which shall be in
addition to the fee of the secretary of state as statutory
attorney-in-fact. The tax commissioner may in any case
require such additional information as he or she may
deem necessary to enable him or her to assess and fix
the just amount of license tax of such corporation; it
shall be his or her duty to notify every such corporation
of the amount so assessed; and it shall be the duty of
the corporation to pay the same to the tax commissioner
within thirty days thereafter, and if it fail to do so it
shall be liable to the penalties prescribed in, or pursuant
to, this article.

(c) Exemptions. — Nonprofit corporations are exempt
from payment of the corporate license tax but must file
with the tax commissioner the return required by
section three of this article, and pay the annual fee of
§11-12C-3. Payment and collection of tax; deposit of money; return required.

(a) Payment and collection of tax. — When application is made to the secretary of state for a certificate of incorporation or authority to do business in this state, it shall be the duty of the applicant to pay all taxes and fees due under this article; and it shall be the duty of the secretary of state to collect the corporate license tax for the first year before issuing such certificate. Thereafter, on or before the first day of the license tax year next following the date of the certificate, and on or before the first day of each succeeding license tax year, such corporation shall pay and the tax commissioner shall collect such tax for a full license tax year together with the statutory attorney fee: Provided, That if the application is made on or after the first day of the second month preceding the beginning of the next license tax year, and before the first day of such license tax year, the secretary of state shall collect the tax for the full year beginning on such first day of the next license tax year in addition to the initial tax, together with the statutory attorney fee.

(b) Deposit of money. — The money so received by the secretary of state and the tax commissioner shall be paid by them into the state treasury.

(c) Returns. — Payment of the tax and statutory attorney fee required under the provisions of this section shall be accompanied by a return on forms provided by the tax commissioner for that purpose. The tax commissioner shall upon completion of processing such return, forward it to the secretary of state, together with a list of all corporations which have paid such tax. Such return shall contain (1) the address of its principal office; (2) the names and mailing addresses of its officers and directors; (3) the name and mailing address of the person on whom notice of process may be served and such other information as the tax commissioner deems appropriate.
§11-12C-4. Due date of return; payment of tax.

It shall be the duty of every corporation required to pay the tax to file a properly completed return together with payment of tax owed to the tax commissioner by the first day of July of the license year; and if it fails to do so it shall be liable for payment of interest, additions to tax and penalties prescribed in article ten of this chapter and subject to the penalties prescribed in section eight of this article.

§11-12C-5. Annual fee of secretary of state as attorney-in-fact.

Every foreign corporation, every foreign limited partnership, every domestic corporation whose principal place of business or chief works is located outside the state, and every domestic limited partnership whose principal place of business is located outside the state, shall pay an annual fee of ten dollars for the services of the secretary of state as attorney-in-fact for such corporation or limited partnership, which fee shall be due and payable at the same time and with the same return, collected by the same officers, and accounted for in the same way, as the annual license tax imposed on corporations under this article. The tax commissioner shall pay over to the secretary of state all attorney-in-fact fees collected under this section, and such fees shall be used to offset the costs of the secretary of state for his or her services as attorney-in-fact.

§11-12C-6. Notice to corporations taxable; tax as lien.

(a) It shall be the duty of the tax commissioner, between April fifteenth and May fifteenth each year, to notify every domestic corporation and every foreign corporation currently registered to do business in this state which is or may be liable for payment of the tax imposed by this article of the time of payment of such tax and the amount thereof, together with the statutory attorney fee, if any. Such notices may be sent through the mails, addressed to the corporation at its last known post office address as shown by the records in the office of the secretary of state.
(b) The amount of such tax shall be deemed a debt due the state, and shall be a lien as to an innocent purchaser for value, on the property and assets of the corporation prior to all other liens, except the lien for ad valorem property taxes levied on its property, from the time a notice of such lien, specifying the year and the amount for which the lien is claimed, is filed in the office of the clerk of the county commission of the county in which the property subject to such liens is situated. Such clerk shall, upon the filing in his or her office of any such notice, record such notice in the docket where general state tax liens are filed and index the same in the name of the corporation against whom the lien is claimed. Upon payment of such lien debt there shall be executed by the tax commissioner and delivered to the clerk of the county commission in whose office notice of such lien is filed a release thereof, which release shall be filed and recorded by such clerk in like manner as releases of judgment or tax liens are filed and recorded. Such tax shall be a preferred debt in case of insolvency.

§11-12C-7. Monthly report by secretary of state to tax commissioner as to corporations.

The secretary of state shall within twenty days after the close of each month make a report to the tax commissioner for the preceding month, in which he or she shall set out the name of every corporation to which he or she issued a certificate of incorporation during the month, as well as the name of each corporation to which he or she issued a certificate of authority, with the amount of license tax paid to him or her by each; also he or she shall set out in such report the names of all corporations to which he or she issued certificates of change of name or of change of location of principal office, dissolution, withdrawal or merger; and a statement of all moneys received during such preceding month from all sources which are due to the state, and pay the same into the treasury; if he or she fails to do so it shall be the duty of the tax commissioner to report such failure to the governor.

§11-12C-8. Administrative and criminal penalties.
The following penalties shall be in addition to the penalties and remedies available under articles nine and ten of this chapter of the code:

(a) *Administrative penalty.* — The commissioner shall impose upon each delinquent corporation a fine in the amount of one hundred dollars per year for each license tax year or portion thereof in which the license tax return which is due is not filed or the license tax which is owed is not paid. This penalty shall be assessed and collected in the same manner as the license tax.

(b) *Criminal penalty.* — It shall be a misdemeanor for a corporation to conduct business for more than thirty consecutive calendar days without paying in full the amount of corporate license tax which is due. The penalty for any officer, agent or employee convicted of such offense shall be a fine equal to a sum of two and one half times the annual corporate license tax assessed for said corporation, not to exceed one thousand dollars per conviction.

(c) *Revocation of certificate of incorporation or certificate of authority.* — Upon the establishment of a finalized liability for corporate license taxes, not subject to further administrative or judicial review under article ten of this chapter, the certificate of incorporation in the case of a domestic corporation, or the certificate of authority in the case of a foreign corporation, shall be revoked. Any corporation whose certificate of incorporation or certificate of authority has been revoked due to nonpayment of its corporate license taxes shall be reinstated to its former rights as if it had not been delinquent upon payment to the tax commissioner of all delinquent license taxes, plus any interest, additions or penalties accruing thereon.

§11-12C-9. *Disposition of corporate license tax collected.*

All taxes collected under the provisions of this article shall be paid into the general revenue fund of the state treasury in the manner provided by law.

§11-12C-10. *Applicability of tax procedure and adminis-
Except when a specific provision of this article directly conflicts with a provision of the "West Virginia Tax Procedure and Administration Act" set forth in article ten of this chapter of the code, the provisions of that act are fully applicable to the corporate license tax imposed by this article. In the event of any conflict, the provisions of this article shall have paramount effect, but the two articles shall be construed as complementary and harmonious unless so clearly in conflict that they cannot reasonably be reconciled. However, notwithstanding any provision of that act, the tax commissioner may lawfully release the names and addresses of the directors and officers of a corporation to anyone upon written request: Provided, That such request provides the correct name of the corporation as reported to the tax commissioner. The tax commissioner may charge a reasonable fee to cover the costs of processing such requests.

Each and every provision of the "West Virginia Tax Crimes and Penalties Act" set forth in article nine of this chapter shall apply to the tax imposed by this article with like effect as if said act were applicable only to the tax imposed by this article and were set forth in extension in this article.

§11-12C-11. Effective Date.

(a) The provisions of this article shall take effect on the first day of July, one thousand nine hundred ninety-three, and apply to license tax years beginning the first day of July, one thousand nine hundred ninety-three and thereafter.

(b) Tax liabilities, if any, arising for taxable years ending prior to the first day of July, one thousand nine hundred ninety-three, shall be determined, administered, assessed and collected as if sections seventy-six through eighty-four and eighty-six through ninety-one, article twelve of this chapter had not been repealed; and the rights and duties of the taxpayer and the state of West Virginia thereunder shall be fully and completely
§11-12C-12. Severability.

If any provision of this article or the application thereof to any person or circumstance is for any reason adjudged by any court of competent jurisdiction to be unconstitutional or otherwise invalid, such judgment shall not affect, impair or invalidate the remainder of said article, but shall be confined in its operation to the provision thereof directly involved in the controversy in which such judgment shall have been rendered, and the applicability of other provisions shall not be affected thereby.

CHAPTER 31. CORPORATIONS.

ARTICLE 1. BUSINESS AND NONPROFIT CORPORATIONS.

§31-1-76a. Notification of court action affecting corporate status.

It shall be the duty of the clerk of every court of this state in which any proceedings are had which result in the forfeiture of the charter or certificate of incorporation of any corporation issued under the laws of this state, or result in the dissolution or extinction of any such corporation, or in the revocation of the rights and privileges of any foreign corporation to do business in this state, to notify the secretary of state of any such forfeiture, dissolution, extinction or revocation, in which report he shall state the name of the court, the name of the corporation, the nature of the actions and the date of the order or judgment, and such other pertinent matter as may be required by the secretary of state; and the secretary of state shall file and record such report in his or her office, and shall note the same in the indexes of corporations kept in his or her office.

The Joint Committee on Enrolled Bills hereby certifies that the foregoing bill is correctly enrolled.

[Signature]
Chairman Senate Committee

[Signature]
Chairman House Committee

Originating in the House.

Takes effect ninety days from passage.

[Signature]
Clerk of the Senate

[Signature]
Clerk of the House of Delegates

[Signature]
President of the Senate

[Signature]
Speaker of the House of Delegates

The within is approved this the 31st
day of    March    , 1992.

[Signature]
Governor